

Ms. Gilhooly



Comptroller General
of the United States
Washington, D.C. 20548

Decision

Matter of: Drum Realty, Inc.
File: B-241630; B-241630.2
Date: February 12, 1991

Karl C. Landsteiner, Esq., Goetz, Hartman & Landsteiner, for the protester.
Carole W. Wilson, Esq., Department of Housing and Urban Development, for the agency.
Kathleen A. Gilhooly, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

1. Protest challenging the rejection of an offer as technically unacceptable is untimely when filed more than 10 working days after the protester was orally informed of the agency's rejection of its offer.
2. Protest challenging an award is dismissed where the protester, who was eliminated from the competitive range and did not timely protest this elimination, would not be in line for award even if the allegation were resolved in its favor, and the protester therefore is not an interested party.

DECISION

Drum Realty, Inc. protests the rejection of its offer and the award of a contract to Forbes Realty, Inc. under request for proposals (RFP) No. 014-90-066, issued by the Department of Housing and Urban Development (HUD) for area management broker services in southwest Florida.

We dismiss the protests.

HUD received 15 proposals, including the protester's, by the RFP's August 29, 1990, closing date. By letter dated September 21, HUD notified Drum that its proposal was technically unacceptable because it did not contain a narrative technical and management proposal covering the

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5 sections listed in the RFP's instructions for preparing the technical and management proposal. In a telephone conversation with Drum on September 25, the contracting officer confirmed that she had received all the documents Drum submitted with its offer and that Drum's proposal was unacceptable because it did not contain sufficient detailed information.

Drum protests that its offer should not have been rejected as technically unacceptable, since HUD had favorably rated a similar proposal submitted for another procurement of similar services, and Drum has successfully performed as the incumbent contractor. Drum's protest with our Office was only "filed" on October 11. In this regard, our regulations define the term "filed," regarding a protest to our Office, as meaning receipt of the protest in our Office. 4 C.F.R. § 21.0(g) (1990). We received Drum's protest letter on October 11, although it was dated and mailed on October 10.

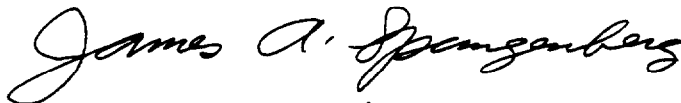
Our Bid Protest Regulations require that protests based on other than apparent solicitation improprieties be filed no later than 10 working days after the protester knew, or should have known, of the basis for protest, whichever is earlier. 4 C.F.R. § 21.2(a)(2). Here, Drum knew of the basis for the agency's rejection of its proposal on September 25.^{1/} Since Drum did not protest to our Office until October 11, more than 10 working days after it learned of the rejection and the reasons therefor, this aspect of Drum's protest is untimely and will not be considered. See Areawide Servs., Inc., B-241995, Nov. 19, 1990, 90-2 CPD ¶ 410.

On October 17, 1990, Drum supplemented its protest, asserting that HUD had awarded a contract to Forbes that did not include the RFP's provisions that appraisal services would be performed at the contractor's expense. The agency submitted a report that documented that these solicitation provisions are included in the contract awarded to Forbes. Since Drum has offered no further argument or evidence in support of this contention, we will not consider this matter further. See Deep Ocean Eng'g, B-238450, Apr. 24, 1990, 90-1 CPD ¶ 417.

^{1/} A protester's receipt of oral information is sufficient to start the 10-day time period for filing a protest running. Swafford Indus.--Recon., B-238055.2, July 30, 1990, 90-2 CPD ¶ 79.

In comments on the agency report, Drum asserts that Forbes has no experience in residential property management and is probably the least qualified offeror. Since Drum's proposal was determined to be outside of the competitive range and it did not timely challenge this rejection, the firm would not be in line for award of the contract, even if it were to prevail in this protest of the award to Forbes. Hence, Drum is not an interested party eligible to challenge the award under 4 C.F.R. § 21.0(a), and we therefore will not consider this aspect of its protest. William Hunter and Assoc., B-235123; B-235164, June 20, 1989, 89-1 CPD ¶ 580.

The protests are dismissed.

A handwritten signature in cursive script that reads "James A. Spangenberg".

James A. Spangenberg
Assistant General Counsel